



## UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	CATEGORY DOCKET NO.	CONFIRMATION NO.
09/578,194	05/24/2000	Marcelo Dornelas	026-1	5443

Dana Rewoldt  
Garst Seed Company  
2369 330th Street  
Slater, IA 50244

RECEIVED	SEARCHED
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SCHMIDT, MARY M.

EXAMINER	PAPER NUMBER
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6/18  
DUE MAILED 04/30/2002



Please find below and/or attached an Office communication concerning this application or proceeding.

09/575,184

Daiichi Sankin Co., Ltd.

Mary Kurnikoff

1641

**Office Action Summary**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION**

This is an Office Action Summary. It is not a final Office Action. It is issued to advise you of the status of your application. It does not contain a final disposition of your claims. You must file a response within the period set forth below or your application will be abandoned. Any reply you file must be submitted on or before the date set forth below. If you do not file a response by the date set forth below, the application will be abandoned. See 37 CFR 1.4(a).

**Status**

- 1 Responsive to communication(s) filed on \_\_\_\_\_  
2a) This action is **FINAL**      2b) This action is non-final

3) Since this application is in condition for allowance except for formal matters, it is closed in accordance with the practice under 37 CFR 1.482. A certificate of mailing can be obtained by calling the Patent Office Customer Service Center at 1-800-PTO-9199.

**Disposition of Claims**

- 4) Claim(s) \_\_\_\_\_ is/are pending in the application  
4a) Of the above claim(s), \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) \_\_\_\_\_ is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are claimed in the text of the specification.  
An applicant may not request that any objection to the drawing(s) be held in abeyance.  
11) The proposed drawing correction filed on \_\_\_\_\_ is/are approved as correct.  
If approved, corrected drawings are required in reply to this Office action.  
12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119.  
a) All b) Some c) None of  
1) Certified copies of the priority documents have been received.  
2) Certified copies of the priority documents have been received in a timely manner.  
3) Copies of the certified copies of the priority documents have been filed in this application from the International Bureau, PCT Rule 17.2(a).  
\* See the attached notice for a list of the entitlements resulting from this priority.  
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 120.  
a) The translation of the foreign language provisional application has been filed.  
15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 120.

**Attachment(s)**

- 1)  Notice of Allowance (Form PTO-1449)  
2)  Notice of Allowance in English (Form PTO-1449)  
3)  Statement of Issues and Statements (Form PTO-1449, Part II)

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### **DETAILED ACTION**

1. The reply filed on February 11, 2002, is not fully responsive to the prior Office action because of the following omission(s) or matter(s): Applicant did not elect either a plant species or a gene species. In the restriction requirement mailed 08 13 01, an election of (1) a plant species and (2) and an ASK gene species was required. In regards to part (2), election of an ASK gene, Applicant replied that the requirement for these species elections was not understood since "there are not different species of genes. There is only the ASK-gene of Group II." In response, dependent claim 6 specifies different species of the AKS group II genes and the specification teaches on page 2 that ASK genes are a multigene family that comprise various members such as alpha, gamma, delta, epsilon and iota. An election of *one* of these species is required since a consideration of the effects (the claimed functions) of modulating expression of any of these species would require an undue burden to search and examine as argued in the previous restriction requirement. In regards to part (1), election of a plant species, Applicant argues that "all plants that have storage organs can be modified. To the extent that an election on this is appropriate the election would be to dicots." In response, claim 14 lists different species of plants in which to express the ASK genes. Since the ASK genes are native to *Arabidopsis* and the specification does not teach their homologs from the other claimed species, significantly different considerations for search and examination are required for consideration of the claimed functions, modification of storage organs using an ASK gene in the different claimed plant species. For this reason, an election of *one* plant species is required for examination on the

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merits. Please note that an election of one species of plant and one species of ASK gene is not permanent as in the case of a restriction to said species. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given a TIME PERIOD of **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Mary M. Schmidt*, whose telephone number is (703) 308-4471.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *John LeGuyader*, may be reached at (703) 308-0447.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Analyst, *Katrina Turner*, whose telephone number is (703) 305-3413.

M. M. Schmidt  
April 23, 2002

*J. LE GUYADER*  
JOHN LE GUYADER  
PATENT EXAMINER  
TECHNICAL DIVISION 1600